

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

JIMMY MILLS,

Plaintiff,

v.

1:17-cv-2524-WSD

**DEKALB COUNTY SHERIFF
DEPT. et al.,**

Defendants.

OPINION AND ORDER

This matter is before the Court on Magistrate Judge John K. Larkins III's Final Report and Recommendation [4] ("Final R&R") recommending dismissal of Jimmy Mills' ("Plaintiff") Complaint [1] pursuant to the Magistrate Judge's frivolity review under 28 U.S.C. § 1915A.

I. BACKGROUND

On July 3, 2017, Plaintiff, *pro se*, filed his Complaint [1] under 42 U.S.C. § 1983. Plaintiff seeks damages from the DeKalb County Sheriff's Department and officials at the DeKalb County Jail for injuries Plaintiff allegedly sustained when an inmate allegedly assaulted him at the jail. ([1] at 5-8). Plaintiff alleges that on May 21, 2016, another inmate attacked him while he was reading his Bible in his cell. (*Id.*). Plaintiff alleges he sustained various physical injuries, including

a broken nose. (Id.).

On July 10, 2017, the Magistrate Judge screened Plaintiff's Complaint pursuant to 28 U.S.C. § 1915A, and issued an order [3] (the "July 10th Order") directing the Plaintiff to submit, within twenty-one (21) days, an amended complaint if he wished to pursue the action. The Magistrate Judge held in the July 10th Order that Plaintiff's Complaint "does little more than describe an alleged assault by a fellow inmate and state that Defendants are responsible for the resulting injuries," which "is not sufficient to support a finding that Defendants violated federal law and to entitle Plaintiff to relief under § 1983." ([3] at 3).

On September 7, 2017, the Magistrate Judge issued his Final R&R recommending dismissal because "[t]he Court gave Plaintiff an opportunity to file an amended complaint," "directed him to file any amended complaint by July 31, 2017," and the "time for doing so has expired." ([4] at 2). No objections to the Final R&R have been filed.

II. DISCUSSION

A. Legal Standard

After conducting a careful and complete review of the findings and recommendations, a district judge may accept, reject, or modify a magistrate judge's report and recommendation. 28 U.S.C. § 636(b)(1); Williams

v. Wainwright, 681 F.2d 732, 732 (11th Cir. 1982) (per curiam). A district judge “shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” 28 U.S.C. § 636(b)(1). Where, as here, no party has objected to the report and recommendation, a court conducts only a plain error review of the record. United States v. Slay, 714 F.2d 1093, 1095 (11th Cir. 1983) (per curiam).

III. DISCUSSION

Section 1915A requires a federal court to conduct an initial screening of a prisoner complain against a governmental entity, employee, or official to determine whether the action is frivolous or malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief against a defendant who is immune from such relief. 28 U.S.C. § 1915A.

Here, the Magistrate Judge found that Plaintiff failed to allege factual allegations sufficient to state a § 1983 claim. To state a claim for relief under § 1983, a plaintiff must allege that: (1) an act or omission deprived him of a right, privilege, or immunity secured by the Constitution or a statute of the United States; and (2) the deprivation occurred under color of state law.” Richardson v. Johnson, 598 F.3d 734, 737 (11th Cir. 2010). Plaintiff’s bare assertion that he was attacked by a cellmate, without more, fails to state a claim upon which relief may be

granted. Plaintiff has failed to cure his Complaint as required by the July 10th Order. The Court holds there is no plain error in the Magistrate Judge's finding, and Plaintiff's claim is thus dismissed.

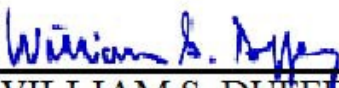
IV. CONCLUSION

For the foregoing reasons,

IT IS HEREBY ORDERED that the Court **ADOPTS** Magistrate Judge John K. Larkins III's Final Report and Recommendation [4].

IT IS FURTHER ORDERED that this action is **DISMISSED**.

SO ORDERED this 2nd day of October, 2017.



WILLIAM S. DUFFEY, JR.
UNITED STATES DISTRICT JUDGE